



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 15, 2022

IN THE MATTER OF:

Appeal Board No. 619427

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 619425, 619426, 619427, the claimant applies to the Appeal Board, pursuant to Labor Law § 620 (3), for a reopening and

reconsideration of the Judge's decisions filed October 19, 2021, insofar as they sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 30, 2020 through January 31, 2021, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$11,592 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), \$10,200 in Federal Pandemic

Unemployment Compensation (FPUC) benefits repayable pursuant to § 2104 (f) (2)

of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and \$1,800 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by 200 effective days and charging a civil penalty of \$3,268.80 on the basis that the claimant made willful misrepresentations to obtain benefits. Due deliberation having been had, the Board has reopened and reconsidered the decisions of the Administrative Law Judge.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

By order filed April 11, 2022, the Board remanded the case to the Hearing Section for a hearing. The Administrative Law Judge held a telephone

conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on

behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: Since 2017, the claimant worked part-time for this employer as a home health aide at \$17.50 per hour. In early 2020, the claimant also worked for two other employers. Although the claimant lost her employment with the two other employers due to the pandemic, she continued to work for this employer

between March 30, 2020, and January 31, 2021. The claimant worked four or more days for this employer in each of the 24 weeks ending April 5, 2020 through the week ending October 4, 2020. In the week ending January 31, 2021, she worked two days.

The claimant told a representative from the Department of Labor that she had lost two of her three jobs and that she was working part-time for this employer. This person told the claimant that she was eligible, to file a claim and to certify for benefits. The Department of Labor representative did not tell her to certify incorrectly.

On April 6, 2020, the claimant filed an original claim for benefits effective March 23, 2020. Her regular unemployment insurance weekly benefit rate was set at \$504. When the claimant certified for benefits each week, she was asked how many days she worked during the week. Each week, she stated she worked zero days that week, except for the weeks ending September 6, 2020 and October 4, 2020. For each of these two weeks, the claimant stated that she worked three days. The claimant had returned to work with one of the employers in September and October 2020. As a result, the claimant received \$11,592 in regular unemployment insurance benefits, \$10,200 in FPUC benefits, and \$1,800 in LWA benefits.

OPINION: Pursuant to Labor Law § 597 (3), "any determination regarding a

benefit claim may, in the absence of fraud or willful misrepresentation, be reviewed only within one year from the date it is issued because of new or

corrected information." The original initial determination is dated June 23, 2021.

Pursuant to Labor Law § 523 there are four effective days per week. One full

week of benefits consists of four effective days (see Appeal Board No. 577396). Labor Law § 522 states that, "Total unemployment"

means the total lack of any employment on any day." An individual who works on four or more days per week does not lack total unemployment (see Labor Law § 523).

The credible evidence establishes that in the period of March 30, 2020 through January 31, 2021, the claimant worked for this employer four or more days in each of the 24 weeks from the week ending April 5, 2020 through the week ending September 6, 2020 and the week ending October 4, 2020. In addition, she worked two days in the week ending January 31, 2021. The claimant does not dispute this. Accordingly, we conclude that the claimant lacked total unemployment in each of the 24 weeks in this period and that she lacked total unemployment on two days in the week ending January 31, 2021.

Pursuant to Labor Law § 597 (4), as amended effective May 18, 1998, a new

determination or decision shall not affect the rights to any benefits already paid under the authority of the prior determination or decision provided they were accepted by the claimant in good faith and the claimant did not make any false statement or representation and did not willfully conceal any pertinent fact in connection with the claim for benefits.

Pursuant to the CARES Act, Federal Pandemic Unemployment Compensation (FPUC) benefits are payable for a week of unemployment only if a claimant has qualified for \$1 of either regular unemployment compensation, Pandemic Emergency Unemployment Insurance (PEUC) benefits, Extended Benefits (EB), Pandemic Unemployment Assistance (PUA) benefits, Short-Term Compensation (STC) benefits, Trade Readjustment Allowance (TRA) benefits, Disaster Unemployment Assistance (DUA) benefits or Self-Employment Assistance (SEA) benefits. Pursuant to Section 2104 (f)(2) of the CARES Act of 2020, as amended by Section 261 of the Continued Assistance for Unemployment Workers Act of 2020, Federal

Pandemic Unemployment Compensation (FPUC) benefits are recoverable if the claimant was not entitled to receive such benefits.

Pursuant to 44 CFR Sec. 206.120 (f)(5), the state is responsible for the recovery of Lost Wages Assistance benefits that were "obtained fraudulently, expended for unauthorized items or services, expended for items for which assistance is received from other means, and awards made in error.

Pursuant to Labor Law § 594, a claimant who has willfully made a false

statement or representation to obtain any benefits shall forfeit benefits and shall pay a civil penalty in an amount equal to the greater of one hundred dollars or 15 percent of the total overpaid benefits.

The credible evidence establishes that for the 24 weeks in which the claimant lacked total unemployment, she was not entitled to benefits. Similarly, in the week ending January 31, 2021, in which the claimant lacked total unemployment on two days, she was not entitled to half of the regular unemployment insurance benefits associated with this week. As a result, the \$11,592 in regular unemployment insurance benefits, \$10,200 in FPUC benefits and \$1,800 in LWA benefits associated with these weeks were overpaid.

The credible evidence establishes that in each of the 25 certifications at issue, the claimant stated an incorrect number of days worked. These statements are factually false. The regular unemployment insurance benefits are recoverable because of these factually false statements. Consistent with federal law, the overpaid FPUC benefits, as well as the LWA benefits which, due to the ineligibility, were paid in error, are recoverable.

We are not persuaded that the claimant received misinformation from the Department of Labor because when asked whether she spoke to the representative about certifying with regard to one employer over the other, her answer was nonresponsive. In addition, the claimant could not recall the questions she asked the representatives from the Department of Labor.

The certification question concerning the number of days worked is clear and straightforward and a claimant's response as to whether she worked does not require any specialized knowledge to answer correctly (see Appeal Board No. 542900). "Willful" as used here does not imply a criminal intent to defraud

but means 'knowingly,' 'intentionally,' 'deliberately' to make a false statement" (see Matter of Vick, 12 AD2d 120 at 122 [3d Dept 1960]). Since the claimant was aware that she had worked and knew the number of days she had worked each week, we conclude that her certifications also constitute willful misrepresentations to obtain benefits. Accordingly, the Department of Labor had authority to issue the initial determinations. In addition, the forfeiture penalty and the civil penalty were properly imposed.

DECISION: The decisions of the Administrative Law Judge are affirmed.

In Appeal Board Nos. 619425, 619426, 619427, the initial determinations, holding the claimant ineligible to receive benefits, effective March 30, 2020 through January 31, 2021, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$11,592 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4),

\$10,200 in Federal Pandemic Unemployment Compensation (FPUC) benefits repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and

Economic Security (CARES) Act of 2020, and \$1,800 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by 200 effective days and charging a civil penalty of \$3,268.80 on the basis that the claimant made willful misrepresentations to obtain benefits, are sustained.

The claimant is denied benefits with respect to the issues decided herein. (Al reclamante se le niegan beneficios con respecto a los temas decididos en el presente.)

MARILYN P. O'MARA, MEMBER